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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Arthritis Foundation, Inc.

Serial No. 76/296,618

Edward M. Prince and Wendy L. Robertson of Alston & Bird
LLP for The Arthritis Foundation, Inc.

Elizabeth J. Winter, Trademark Examining Attorney, Law
Office 113 (Odette Bonnet, Managing Attorney).

Before Simms, Hanak and Drost, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

The Arthritis Foundation, Inc. (applicant), a Georgia
corporation, has appealed from the final refusal of the
Trademark Examining Attorney to register the mark ARTHRITIS
WALK on the Principal Register for "charitable fundraising
services; organizing, arranging and conducting charitable

fundraising events.”¹ The Examining Attorney has refused registration under Section 2(e)(1) of the Act, 15 USC §1052(e)(1), arguing that applicant’s mark is merely descriptive of its services. Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

We affirm.

Relying on dictionary definitions, applicant’s specimen of use, evidence from the Nexis electronic database and from the Internet, the Examining Attorney contends that the asserted mark ARTHRITIS WALK is merely descriptive because the mark immediately informs sponsors and participants that applicant is organizing and conducting a walk to raise money to fight the disease of arthritis. In other words, the words ARTHRITIS WALK describe a quality, characteristic or feature of applicant’s fundraising services--that applicant is conducting a walk to benefit arthritis patients. The Examining Attorney contends that participants and others

¹ Application Serial No. 76/296,618, filed August 7, 2001, based on applicant’s assertion of a bona fide intention to use the mark in commerce. Applicant subsequently filed an amendment to allege use (on November 5, 2002) along with a contingent amendment to place this application on the Supplemental Register in the event registration on the Principal Register is denied. See TMEP §1212.02(c). That amendment claims use since December 2001. The Examining Attorney has approved this alternative request for registration on that register. See Examining Attorney’s brief, 2. Accordingly, if we affirm this refusal to register, this application will be placed on the Supplemental Register.

will immediately understand from the mark the nature of applicant's services.

Furthermore, pointing to evidence which she has made of record, the Examining Attorney argues that it is customary for charitable organizations to use the name of a condition or disease followed by the word "walk" to identify their walks to raise money to fight the particular disease that is the focus of the particular charitable organization. The evidence shows that such other terms as "diabetes walk," "breast cancer walk," "Alzheimer's walk," "Cystic Fibrosis Walk," "Cancer Walk" and "Heart Walk" are being used by such organizations. The Examining Attorney also notes that the evidence reflects that some charitable organizations use somewhat suggestive or arbitrary terminology as identifying marks for their fundraising services, such as "Making Strides Walk" (breast cancer), "Memory Walk" (Alzheimer's), "Light the Night walk" (leukemia and lymphoma) and "Pettrek" (animals with cancer).

Applicant's specimen of use shows the mark sought to be registered in the following context:

The Arthritis Foundation salutes our 2002 Arthritis Walk participants and the sponsors for making a difference in the lives of people with arthritis! Across the country, more than 10,000 people joined together in May during

National Arthritis Month to raise more than one million dollars to fight arthritis, the nation's number one cause of disability...

...Participants will have the choice of a 5K or 1-mile walk. Men, women and children with arthritis will lead the way wearing special blue honoree hats to show that they are taking control of their arthritis. And during the walk you'll have an opportunity to write a message on the inspirational Wall of Heroes.

The best way to enjoy the Arthritis Walk is to invite others to walk with you. Anyone can participate...

The Examining Attorney has also introduced copies of various pages from applicant's Web site showing that applicant's annual ARTHRITIS WALK is a nationwide walk that raises funds to fight arthritis and related diseases.

Applicant, on the other hand, argues that its mark is only suggestive (or highly suggestive) of its fundraising services but not merely descriptive of them. Applicant admits that walks are a common method of raising funds (reply brief, 5) and that its services "include a nationwide walk that raises funds to fight arthritis..." (brief, 5, and Request for Reconsideration, filed November 5, 2002, 2). However, the fact that a "walk" is a common way of raising money does not necessarily make the word merely descriptive of charitable fundraising services, according to applicant. Applicant contends that

"arthritis" does not describe its fundraising services but is the name of a disease, and that, while "walk" may be descriptive of an activity employed by applicant to raise funds, applicant's fundraising services cannot be described as a "walk." Also, read literally, "arthritis" does not "walk" (brief, 5).

Moreover, applicant argues that there is some incongruity in its mark because one with arthritis may have a difficult time walking. Also, the combination of two descriptive words, assuming each one is descriptive of certain aspects of the activities surrounding applicant's services, may lead to a non-descriptive, suggestive composite. Applicant argues, therefore, that some imagination, thought or perception is needed to reach a conclusion about the nature of applicant's services. Because multi-stage reasoning is needed, applicant's mark is only suggestive, applicant contends. However, applicant does concede that participants will "have little difficulty in figuring out that fundraising activities involve a walk to raise money to fight arthritis." Brief, 6. Further, applicant's attorney argues that applicant's mark is no more descriptive than various third-party registered marks such as WALK FOR HOPE

AGAINST BREAST CANCER, CROP WALK, WALK AS ONE WALK-A-THON, AMERICAN HEART WALK, WALK THE TALK and WALK WITH THE WORLD. Finally, applicant argues that any doubt should be resolved in favor of allowing its mark to be published for opposition.

It is well settled that a term is merely descriptive, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes a quality, characteristic or feature of the goods or services or directly conveys information regarding the nature, function, purpose or use of the goods or services. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Also, whether a term is merely descriptive is determined, not in the abstract, but in relation to the goods or services for which registration is sought and the possible significance that the term may have to the relevant purchasers. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Further, we must judge the question of mere descriptiveness on the basis of the likely purchaser perception of the asserted mark according to the evidence of record.

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that applicant's mark is merely descriptive of its services. The Examining Attorney has made of record

evidence that it is not uncommon for organizations to have walks named after the particular disease or condition that is the focus of their fundraising efforts. And applicant appears to follow this practice. We have no doubt that, on this record, sponsors and participants in applicant's fundraising walks will perceive the asserted mark ARTHRITIS WALK as merely describing a feature of applicant's fundraising services, namely that applicant is organizing or conducting a walk to raise money to fight arthritis. No imagination, thought or perception is needed to reach a conclusion as to the nature of applicant's services.

Finally, as the Examining Attorney has noted, third-party registrations are not conclusive on the question of descriptiveness. A mark is not registrable merely because similar marks might be on the register. *In re Scholastic Testing Services, Inc.*, 196 USPQ 517 (TTAB 1977). The Board must decide each case on its own merits. *In re Owens-Corning Fiberglas Corp.*, 774 F.2d 1116, 1127, 227 USPQ 417, 424 (Fed. Cir. 1985). However, even if some prior registrations had some characteristics similar to applicant's mark (and it is not clear that they do), the allowance by this Office of such prior registrations does not bind the Board. See *In re Nett Designs, Inc.*, 236 F.3d

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1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). As that Court stated:

Nonetheless, the Board (and this court in its limited review) must assess each mark on the record of public perception submitted with the application. Accordingly, this court finds little persuasive value in the registrations that Nett Designs submitted to the examiner or in the list of registered marks Nett Designs attempted to submit to the Board.

Decision: The refusal of registration is affirmed. This application will proceed to registration on the Supplemental Register.